

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

APR 26 2011

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2010-0362-PR
	)	DEPARTMENT A
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
RAUL SANTOS SILVAS,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20063683

Honorable Richard S. Fields, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines

Tucson  
Attorneys for Respondent

Raul Santos Silvas

Kingman  
In Propria Persona

B R A M M E R, Presiding Judge.

¶1 After a jury trial, petitioner Raul Silvas was convicted of aggravated assault, aggravated robbery, and armed robbery, all dangerous offenses, and sentenced to a combination of presumptive and mitigated, enhanced prison terms totaling 23.75 years.

He appealed, challenging the sufficiency of the evidence to support the convictions, and this court affirmed. *See State v. Silvas*, No. 2 CA-CR 2008-0165 (memorandum decision filed Mar. 19, 2009). He filed a notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., and counsel filed a petition in which she identified two issues Silvas wished to raise and stated she had reviewed the record and found no meritorious issues. Silvas filed a pro se petition in which he raised claims of ineffective assistance of trial, appellate, and Rule 32 counsel, as well as other claims for relief. The trial court denied relief and Silvas filed a pro se petition for review. Absent a clear abuse of discretion by the trial court, we will not disturb its ruling. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 Silvas's Rule 32 counsel stated that Silvas intended to challenge the victim's identification of him and his consecutive sentences. Counsel correctly evaluated these claims, concluding the first was precluded because it had been raised in Silvas's appeal and the second was meritless. In his "Petition to Proceed in Pro Se" Silvas asserted he had "reasons to believe" Rule 32 counsel had "neglected her role as an active advocate in behalf of her client," violating, inter alia, his right to effective assistance of counsel. He reiterated that claim in his subsequently filed petition for post-conviction relief, also challenging his identification and raising various claims of ineffective assistance of appellate counsel and claims of prosecutorial misconduct. Additionally, Silvas asserted trial counsel had been ineffective in failing to raise adequately the identification issue both at trial and in connection with the grand jury proceedings and the

indictment, failing to seek a favorable plea agreement, and failing to prepare adequately for trial, object to certain evidence, and properly question witnesses.

¶3 In its well-reasoned, thorough minute entry, the trial court summarized Silvas's claims and, specifying the applicable law, concluded he had not raised a colorable claim for relief. On review, Silvas appears to reiterate most of the claims he had raised below, particularly those relating to ineffective assistance of trial, appellate, and Rule 32 counsel, albeit in a cursory, summary fashion. He contends the court evaluated certain claims, which it specifically identified, but that it neglected to review others. He also asserts the court's recitation of certain facts was inaccurate.

¶4 No purpose would be served by rehashing the trial court's correct ruling in its entirety here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Rather, because the ruling is correct and Silvas has not sustained his burden of establishing the court abused its discretion in denying the petition for post-conviction relief, we adopt its ruling. We note in particular that, contrary to Silvas's assertion, the court addressed all of the claims he had raised, some with more specificity than others. Silvas raised numerous claims in his Rule 32 petition, some of which overlapped with others or were vague and difficult to identify or separately characterize. After adopting as correct the state's response in opposition to Silvas's Rule 32 petition and thoroughly disposing of a number of claims that it clearly identified, the court continued, "in the interest of putting to rest Petitioner's issues once and for all, the court further addresses select claims as follows." The court then identified and evaluated these claims in greater depth. The court did not abuse its discretion in any respect.

¶5 Finally, as to Silvas’s claim of ineffective assistance of Rule 32 counsel, he clearly failed to raise a colorable claim for relief. First, we question the propriety of raising such a claim in the very same proceeding as that in which the attorney whose conduct is at issue is representing him. Second, a non-pleading defendant such as Silvas has no cognizable claim under Rule 32 based on the purported ineffectiveness of Rule 32 counsel. *See State v. Mata*, 185 Ariz. 319, 336-37, 916 P.2d 1035, 1052-53 (1996).

¶6 The petition for review, therefore, is granted, but for the reasons stated herein, we deny relief.

/s/ J. William Brammer, Jr.  
J. WILLIAM BRAMMER, JR., Presiding Judge

CONCURRING:

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge